IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1253.

HUMBLE OIL & REFINING COMPANY,
Petitioner,

v.

SUN OIL CO.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITIONER'S REPLY BRIEF.

The Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit was docketed on January 20, 1971. A Brief in Opposition was filed on February 17, 1971. Respondent's persistent use of misleading terminology requires a reply since its very argument underscores the errors committed below. An otherwise uncomplicated maritime factual and legal situation becomes, in Respondent's hands, one of confusion with the studied substitution of facts that might have been for the legal obligations imposed on these vessels by reason of their original relationship to each other.

ARGUMENT.

The principal error in Respondent's brief and the lower courts' opinions is the articulation of land oriented reasoning which, although seemingly logical, has no application to a maritime casualty governed by navigation rules.

Respondent relies on the trial court's determination that at about 0606, when the SUN first saw the ESSO NEW YORK, the vessels were so far to the starboard of each other, that a starboard to starboard passing was safe and practicable (Respondent's brief pp. 5, 8). To an observer on shore, unfamiliar with the governing maritime principles, the above statement has an element of logic, i.e., the vessels' intersecting courses, which were not at right angles, would at some later point perhaps allow them to "pass" and place them in a position where they would be starboard to starboard. On a highway or in a narrow channel automobiles or vessels may be on intersecting courses and eventually pass port to port or starboard to starboard due to the physical limitations imposed to either side—the configuration of the highway or channel eventually bringing them to the "head and head" or "end on" situation where each keeps to one side or the other. Nevertheless, such reasoning has no application to the relatively open waters involved in this collision. Automobiles traveling on separate but intersecting highways can only collide at the point where the highways intersect, a point generally provided with traffic controls. However, vessels traveling in open waters, but on intersecting courses, can collide at an infinitesimal number of points depending on the many possible changes in the course and/or speed of either or both vessels.

In order to prevent vessels on intersecting courses from colliding, the navigation rules provide certain definitive obligations which must be followed. In regulating the approach of two vessels to each other, except when both are

proceeding in the same direction, the rules describe only two types of encounters: "meeting" and "crossing". The term "passing", one of the apparent bases for the lower courts' confusion, may be used interchangeably with the term "meeting", but should never be used to describe a "crossing" situation because of the different obligations imposed on each vessel, which duties have been enunciated in the petition.

Respondent's brief attempts to dispose of Petitioner's arguments concerning the lower courts' clear errors of law by contending Petitioner seeks a third review of the facts. The fallacy in this argument is clearly shown by Petitioner's adoption of SUE's own exhibit, P-28, and the testimony of its expert who prepared it. As was apparent to Mr. Suarez in that portion of his testimony presented at page 4 of the petition, these vessels were on intersecting or crossing courses at the time they began to navigate with respect to each other. Respondent's erroneous reliance on cases discussing intersecting angles between vessels meeting in narrow channels (p. 10), or the mistaken beliefs of SUE's crew respecting the course of Esso, cannot change the uncontradicted evidence of SUE's own expert that these vessels were crossing.

Contrary to Respondent's contention on page 16 of its brief, a court's erroneous review of the uncontested facts and its complete failure to apply the governing law must always be a basis for review by this Honorable Court. Moreover, the error goes deeper. It is a factual determination substituted for a legal determination—a non-maritime description of events instead of a legal analysis of the controlling law. Both Respondent and the lower courts adopt their own characterization of the ships' courses rather than adhering to the mandates of the rules. As such, the error is one of law; therefore, Respondent's argument

that Petitioner is seeking a review of the facts is misplaced. Certainly such errors do not become inviolable because sanctioned by a higher court and opposing counsel. Instead, the errors acquire a greater significance which must be corrected before lower courts and, more importantly, navigators compound them.

The "crossing" rule is designed so that every navigator, including weekend sailors, will not be required to make close approximations of courses, distances, and speeds. His conduct should not be burdened by time consuming calculations which might cause dangerous hesitation in performing his duty. Rather, with immediate reference to the rule he can distinguish the aspect of his vessel to the other and be guided accordingly—either holding his course and speed or staying out of the way.

SUN's obligation from first visual sighting was to stay out of the way. She admittedly intended to cross ahead of Esso without regard for her required duties and only belatedly took any avoiding action. She must necessarily be held at fault for committing such statutory breaches.

CONCLUSION.

For the foregoing reasons and those set forth in the petition, it is respectfully submitted that a petition for a writ of certiorari be granted.

Respectfully submitted,

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